IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11224 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHAVESHBHAI PANCHABHAI KARMATA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11224 of 2000

MR CJ VIN for Petitioner No. 1-2

MR VIPUL PANCHOLI, A.G.P for Respondent No. 1-2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 09/08/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.G.P. Shri Vipul Pancholi for the respondents.

2. Heard learned advocate Shri M.B. Gohil for the petitioners and learned A.G.P. Shri Vipul Pancholi for the respondents. The petitioners have been aggrieved by an order dated 6th March, 2000 passed by the Commissioner of Tribal Development whereby caste certificates issued to the petitioners by the District Social Welfare Officer had been set aside on the ground that the District Social Welfare Officer had no authority to issue such caste certificates.

3. Learned advocate Shri M.B. Gohil appearing for the petitioners has submitted that on the basis of the certificates issued by the District Social Welfare Officer, the petitioners had already taken certain advantages and in fact the petitioners belong to Rabari community which is considered as Other Backward Caste. It has been submitted by the learned advocate that if the said certificates are withdrawn, the petitioner shall be immediately deprived of the benefit which they have already been given on the basis of the said certificates. In the circumstances, it has been prayed that the impugned order be quashed and set aside.

4. On the other hand learned A.G.P. Shri Vipul Pancholi has submitted that according to the instructions given by the Government, the District Social Welfare Officer is not an authorised person to issue certificate with regard to caste. According to him, the only Officer who can issue such a certificate is the concerned Mamlatdar of the Taluka and in the instant case, the concerned Mamlatdar of the Taluka had not given certificate with regard to caste of the petitioners and, therefore, after hearing the petitioners, the Commissioner, Tribal Development had rightly cancelled the certificates of caste issued by the District Social Welfare Officer. It has been thus submitted by the learned A.G.P. that the impugned order is just, legal and proper.

5. I have heard the learned advocates. It cannot be disputed that the certificates which were given to the petitioners with regard to their caste were not proper as the District Social Welfare Officer was never authorised to issue such certificates. The impugned order is therefore just and proper. However, looking to the fact that the petitioners have in fact obtained certain benefits and by cancellation of the said certificates the petitioners are likely to be deprived of the benefits which have already been given to them, the petitioners would be then put to great difficulty.

6. Looking to the said facts, it is directed that the petitioners shall submit their applications to the concerned Mamlatdar of the Taluka for issuance of caste certificate. It is hoped that the concerned Mamlatdar shall do the needful for issuance of caste certificates to the petitioners within a period of three months from the date of intimation of this order as well as from the date of application submitted by the petitioners. Needles to say that the concerned Mamlatdar shall examine the facts of each case and if he is satisfied that the applicants belong to a particular caste, then only he shall issue necessary certificate.

7. Looking to the facts of the case, it is directed that no action for cancelling the benefits already given to the petitioners shall be taken till 31-12-2002, if no action has been taken so far against the petitioners. Subject to the above order, the petition stands rejected with no order as to costs. Rule is discharged.

(A.R.DAVE.J.)

siji